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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,531	12/02/2004	Roger S. Levy	P70292US0	6996
136	7590	02/07/2006	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/516,531

Applicant(s)

LEVY, ROGER S.

Examiner

Thanh K. Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "packed in modified atmosphere in the machine", as recited in claim 1, lines 8-9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation in claim 1, lines 8-9, "a product fed by the conveyor to vacuum before it is packed in modified atmosphere in the machine" (reference numbers were omitted) is unclear and therefore indefinite, because the recitation is contradicted to the specification (page 6, lines 5-7 and lines 20-22). According to the specification as mentioned, the product is submitted to be vacuumed and modified atmosphere before entering the packaging area. However, the recitation of claim 1 (lines 8-9) indicates that the product is packed in the modified atmosphere after being vacuum (If this is the case, the Applicant is required to provide drawing to show this feature as indicated in the paragraph 1 above).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ikeda et al. (5,027,588).

Ikeda et al. discloses an apparatus comprising: a machine for continuous packing in modified atmosphere of food products and a conveyor (2) for continuous sequential feeding of food products to the machine, wherein means or bell (5 or 20), at the entrance of the machine, submit the product fed by the conveyor to vacuum before it is packed in modified atmosphere in the machine (column 2, lines 22-33 and column 5, lines 1-10).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda et al. (5,027,588) in view of Kawaguchi et al. (4,640,081).

As discussed above in paragraph 5 of this office action, Ikeda et al. discloses the claimed invention, but it does not expressly disclose the bell that is supported and moves synchronous along the transport section of the conveyor.

Kawaguchi et al. discloses an apparatus comprising: bell (15) wherein the bell is supported by movement means (M2 – the carousel in figure 6) for synchronous

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movement along a transport section of a conveyor to enclose a product under the bell and submit the product to vacuum means (as in claims 2 and 9).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the bell in Ikeda et al. into the bell that support by the carousel as taught by Kawaguchi et al. to provide a high speed automatic packaging machine.

The modified Ikeda et al. by Kawaguchi et al. further discloses:

the carousel transporting the bell (15) along a closed section that comprises the transport section of the conveyor and means (14, 33, 36) of controlled lowering of the bell onto the conveyor (Kawaguchi – Fig. 9) (as in claims 3 and 10);

the controlled lowering means comprise a support (33) of the bell that can be vertically lowered against the action of the elastic means (23, 27) keeping the bell in a raised position and actuator means (30a, 34, 36, 40) positioned along the transport section to push the bell towards the conveyor against the action of the elastic means (Kawaguchi – Fig. 9) (as in claims 4 and 11);

the actuator means comprise a lowering cam yoke (36) of the support bell (Kawaguchi – Fig. 9) (as in claims 5 and 12);

a plurality of bell to act simultaneously on several products moved sequentially along the transport section (Kawaguchi – Fig. 6) (as in claims 6 and 13);

the suction (46 – kawaguchi) and input means are supported by the carousel to be moved together with the bell (the bell of Ikeda modified by Kawaguchi would have suction and input means in one unit) (as in claims 7 and 14);

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the continuous packing machine in modified atmosphere is the type comprising a roll of plastic film (R) and means that unroll, conform into a tube and weld the film to create packs sequentially around products fed to it (Kawaguchi – Figs. 1 & 2) (as in claim 8);

the suction and input means comprise a pump (not shown – kawaguchi, column 7, lines 24-25) for each bell (as in claim 15); and

the counter-bells (13) connected to means for suction of air from inside them and which are mobile, to be positioned in front of the bells and in contact with the other face of the transport surface of the conveyor, in the sense that vacuum is created that balances the action of vacuum of the bells on the conveyor (Kawaguchi – Fig. 9) (as in claim 16).

### ***Conclusion***

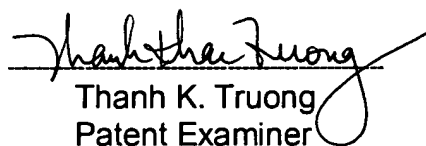
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Thanh K. Truong  
Patent Examiner  
February 3, 2006.